

**From:** David Bruhn [mailto:david.bruhn@ymail.com]  
**Sent:** Thursday, October 03, 2013 3:25 AM  
**Subject:** Public Safety and Economic Development Committee Testimony

I object to Bill 58 and all other laws discriminatory to houseless and the poor--i.e.: people. Before making an important decision please read these excellent papers on urban planning.

Sincerely, David Bruhn, DeOccupy Honolulu

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**From:** David Bruhn [mailto:david.bruhn@ymail.com]

**Sent:** Thursday, October 03, 2013 3:32 AM

**Subject:** Public Safety and Economic Development Committee Testimony

Please do not pass Bill 59 or any other law discriminatory to houseless and the poor--i.e.: people. Before making an important decision please read these excellent papers on houselessness.

Sincerely, David Bruhn, DeOccupy Honolulu

## **Patterns of Exclusion: Sanitizing Space, Criminalizing Homelessness**

**Randall Amster**

**I**N RECENT YEARS, A PATTERN HAS EMERGED, A SEEMINGLY SELF-EVIDENT TREND toward restricting, regulating, and removing from public view persons commonly referred to categorically as “the homeless.” I first encountered these processes in a variety of scholarly and journalistic sources and, most acutely, in my then place of residence, Tempe, Arizona, a southwestern “college town” of just under 200,000 that is often seen as the social and recreational center of the Phoenix metropolitan area. While exploring these questions theoretically and pragmatically, I discovered that rather than an “emerging” trend, patterns of spatial exclusion and marginalization of the impoverished that have existed throughout modern history have reemerged.

As such, this study attempts to locate contemporary manifestations of these patterns in their historical contexts, comprising a theoretical overview of anti-homeless legislation and regimes of spatial control. Moreover, these inquiries are grounded in events and activities observed in practice, drawing upon various media publications, government and corporate documents, participant observations of homeless communities, and open-ended interviews with street people in Tempe (approximately 75, conducted over a three-year period from 1998 to 2001). In the end, both my theoretical exposition and grounded case study conclude that homeless street people have been frequent subjects of demonization and criminalization, and that contemporary trends reflect even further “advancements” in patterns of regulatory fervor and casual brutality. Accordingly, this study aims to illuminate these trends, to raise awareness about and encourage activism around the implications for the homeless and the public spaces they often occupy, and to make “legible” the violence that pervades such social policies.

What is it about the homeless that inspires such overt antipathy from mainstream society? What is so special about their particular variety of deviance that elicits such a vehement and violent response to their presence? After all, “the

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**RANDALL AMSTER** is a visiting instructor of Peace Studies and Social Thought at Prescott College (301 Grove Avenue, Prescott, AZ 86301; e-mail: ramster@prescott.edu). His research interests and activist endeavors focus upon anarchism, ecology, utopia, resistance, homelessness, globalization, peace movements, radical pedagogy, and community building. The author wishes to acknowledge Pat Lauderdale, Cecilia Menjivar, Randel Hanson, Emily Gaarder, and Sahee Kil for their input and support throughout the formulation of this essay, as well as the editors and reviewers at *Social Justice* for their constructively pointed comments.

homeless” as a class lack almost all indicia of societal power, posing no viable political, economic, or military threat to the dominant culture. Of course, as studies of deviance have continually borne out, a society’s response to “deviant” elements is rarely linked in a direct way to any actual or credible threat. The threat is more one of *perception* than reality, more of a societal preemptive strike against an as-yet-unborn threat that often originates within the dominant culture itself, but finds concrete expression in some abject, powerless element of society. As such, depictions of “deviant subcultures” in the mainstream media are likely to feed into stereotypes of danger, disorder, disease, and criminality, helping to construct “the other” as inferior, inhuman, unsympathetic, deserving of their fate, and perhaps even requiring punitive measures. That all of this arises more from perception than fact testifies to the power of human emotions and collective consciousness, as well as to their horror. It is, after all, a short journey from diversity to deviance, from deification to demonization, and from sanctification to criminalization.

### Demonization and Disease

As Henry Miller (1991) has observed, there have been times in history in which the image of the homeless beggar was one of sacrificial piety and mendicant holiness. Nevertheless, such characterizations have been the exception, and, at least since the enclosure of the common lands in 16th-century England, almost nonexistent. Once domains of private property began to dominate the cultural and physical landscape, “vagrancy began to be seen as a threat to the order of things”; later, as urban centers began to develop and market economics took hold, “vagrancy was to be perceived as a threat to capitalism” (*Ibid.*: 9). This was particularly true in the developing United States, where a version of the Protestant Work Ethic is intimately connected to the national mythos of equal opportunity and free-market meritocracy (*cf.* Weber, 1958). Fast forwarding to the present, the dominant culture heavily stigmatizes poverty as an “individual pathology,” rather than a structural phenomenon,<sup>1</sup> and the homeless — because of their inescapably public presence and frequent juxtaposition to centers of leisure — invariably inspire the most virulent derogation and overt animus. Poor people with homes are at least “out of sight” for the dominant culture, if not “out of mind”; lacking private spaces, however, the homeless are often in plain view, and therefore are subject to the most direct forms of official exclusion and public persecution.

In mainstream publications, both academic and journalistic, even depictions intended to be sympathetic to the homeless often contribute to a mindset of *demonization*. One of the most enduring signs of this is the association of homelessness with images of dirt, filth, decay, and disease (see Gowan, 2000: 98). Henry Miller (1991: 22) notes that historically the vagrant was seen as a person of “many vices and debilities; was sickly and suffered from the ravages of tuberculosis, typhus, cholera, scrofula, rickets, and other disorders too numerous to mention; was apt to be a member of the despised races; [and whose] life was

characterized by all the usual depravities: sexual license, bastardy, prostitution, theft." Miller's analysis suggests two related strands that contribute to homeless stigmatization. The first arises from invocations of disorder, illegality, and immorality and leads to processes of regulation, criminalization, and enforcement. The second is the disease and decay image, which leads to processes of sanitization, sterilization, and quarantine. In a sense, these two spheres are inseparable, leading to the same ends of *exclusion*, *eradication*, and *erasure*. Both strands converge in another sense *vis-à-vis* the homeless who occupy spaces that, like themselves, are often viewed as dirty and disorderly and thus require regulation and sterilization; as Mike Davis (1990: 260) opines, "public spaces," like the homeless, are imbued with "democratic intoxications, risks, and unscented odors."

The analysis in this essay considers the "disease" metaphor to be conceptually distinct from the "disorder" image. This arises out of the "Disneyfication" of urban space that geographers have often noted (e.g., Sorkin, 1992), since the Disney metaphor (and reality) is one of antiseptic sterility and disinfected experience, of shiny surfaces and squeaky-clean images. It is the apotheosis of what Herman Hesse described in *Steppenwolf* (1972: 16) as "bourgeois cleanliness," representing "the very essence of neatness and meticulousness, of duty and devotion...a paradise of cleanliness and spotless mediocrity, of ordered ways." Disney is above all the sterilized environment, a place stripped of any outward signs of filth, decay, spoliation, or despair. Underneath that facade, however, is an interior dystopian world of darkness, brutal efficiency, neurosis, rigid control, and emptiness. As Hesse (1972: 23–24) describes the plight of his protagonist, trapped in a place not unlike the Disney-dystopia, the disease he suffers from "is not the eccentricity of a single individual, but the sickness of the times themselves, the neurosis of that generation...a sickness, it seems, that by no means attacks the weak and worthless only but, rather, precisely those who are strongest in spirit and richest in gifts." Disneyland, then, comes to be seen not as a place for the "clean" to gather and play, but as an antiseptic retreat for the diseased of spirit to be temporarily distracted from the depredations of their existence. In a sense, it might be said that "the palpable fears of the bourgeoisie" (Mitchell, 1997a: 328) have, throughout modernity, reflected doubts about the health and vitality of the elite classes — doubts that are often subsequently projected on and attributed to some marginalized or colonized "other" (*cf.* Fanon, 1991).

In light of the hegemonic nature of the Disney aesthetic, it is worth considering how this notion of "disease" seems to originate primarily within the dominant culture, and then is projected onto marginalized populations such as the homeless. In this regard, it is instructive to consider how constructions of street people and the homeless serve to perpetuate stereotypes and maintain stigmatization, since these processes serve to reinforce such projections and reify bourgeois fears. As Talmadge Wright (1997: 69) infers, "the homeless body in the public imagination

represents the body of decay, the degenerate body, a body that is constantly rejected by the public as 'sick,' 'scary,' 'dirty,' and 'smelly,' and a host of other pejoratives used to create social distance between housed and unhoused persons." This sense of *social distancing* reflects "the desire of those who feel threatened to distance themselves from defiled people and defiled places...places associated with ethnic and racial minorities, like the inner city, [that] are still tainted and perceived as polluting in racist discourses, and place-related phobias [that] are similarly evident in response to other minorities, like gays and the homeless" (Sibley, 1995: 49, 59).

In analyzing "new urban spaces," Wright (2000: 27) thus observes: "In effect, street people, camping in parks, who exhibit appearances at odds with middle-class comportment, evoke fears of 'contamination' and disgust, a reminder of the power of abjection. Homeless persons embody the social fear of privileged consumers, fear for their families, for their children, fear that 'those' people will harm them and therefore must be placed as far away as possible from safe neighborhoods." Likewise, Samira Kawash (1998: 329) notes: "The public view of the homeless as 'filth' marks the danger of this body *as body* to the homogeneity and wholeness of the public.... The solution to this impasse appears as the ultimate aim of the 'homeless wars': to exert such pressures against this body that will reduce it to nothing, to squeeze it until it is so small that it disappears, such that the circle of the social will again appear closed." Bringing this cycle of demonization and repression to its logical conclusion, Wright (2000: 27) concludes: "The subsequent social death which homeless persons endure is all too often accompanied by real death and injury as social exclusion moves from criminalization of poverty to social isolation and incarceration in institutional systems of control — shelters and prisons."

Disturbingly, many proponents of regulating and criminalizing the homeless readily embrace such disease metaphors and their ethnocidal implications. Robert Ellickson (1996), Yale Law School Professor of Property and Urban Law, for example, implicitly affirms the image through his "revulsion at body odors and the stink of urine and feces" (Waldron, 2000). "Others, including many city officials, celebrate gentrification for reversing urban decay and boosting the tax base. They often refer to it as 'revitalization,' drawing on the metaphors of disease, deterioration, death, and rebirth" (Williams, 1996: 147). As Jeff Ferrell (2001: 175) observes, "drawing on evocative images of filth, disease, and decay, economic and political authorities engage in an ideological alchemy through which unwanted individuals become [a] sort of 'street trash' [and which] demonizes economic outsiders, stigmatizes cultural trespassers, and thereby justifies the symbolic cleansing of the cultural spaces they occupy." Countless newspaper editorials, including cartoons (*cf.* Wright, 1997: 209), contribute to these trends by depicting the homeless as vile, malodorous, and dangerous — which is starkly evident in an *Arizona Republic* editorial image of Tempe's major downtown thoroughfare, Mill Avenue (February 12, 2000).

In political terms, the pervasiveness of the disease image in connection with the homeless serves simultaneously to empower officials and merchants to assume the mantle of speaking for “the community” in devising and implementing schemes to remove the perceived threat, and to disempower the homeless from having effective domains of self-presentation and resistance. As Wright (1997: 39) concludes, “living with ‘spoiled identities,’ the very poor are categorized, inspected, dissected, and rendered mute in the public discourse about their future by those who have the power to enforce [such] categorical distinctions.” Tempe’s “Piper” (interview, 2000), a 20-year-old self-described “gutter punk,” waxes philosophically about the whole state of affairs: “They think their lives would be so much better if they didn’t have to see the ‘slime’ and the ‘scum’ that lives on the street, but you know what? This is fucking real life, this is *here*, a diverse amount of things — in this world you never know what you’re gonna see, so why try to hide it? Their kids are gonna find out about it anyway.” Lyn Lofland (1998: 190) also notes this eventual permeation of homeless identity, despite attempts at regulation: “If regulation alone could achieve the purification of the public realm, we would all currently live in a world from which...the homeless...had completely disappeared.” Nonetheless, despite their lack of full realization in the present, it is apparent, as Ferrell (2001: 175) explains, that such efforts “promote a type of spatial cleansing whereby unwanted populations are removed, by the force of law and money, from particular locations and situations. But this spatial cleansing is at the same time a cultural cleansing; as economic, political, and legal authorities work to recapture and redesign the public spaces of the city, they work to control public identity and public perception as well, to remove from new spaces of consumption and development images of alternative identity.”

### **Disorderly Conduct: The Absurdity of Anti-Homeless Legislation**

It is not much of a stretch to move from this sense of “spatial cleansing” and “cultural sanitization” (*Ibid.*: 169) to patterns of criminalization and enforcement. As Smith (1994) notes, “increasingly, communities are using the criminal law to cleanse their streets of homeless survivors.” Whereas the “disease” metaphor is predicated on a view of the homeless as physical pestilence, the “disorder” image upon which criminalization often is based arises from a view of the homeless as a “moral pestilence” (Simon, 1992; cf. McConkey, 1996) and a “threat to the social order” (Simon, 1992). Whereas the depiction of disease leads to the imposition of regimes of sterility and sanitization, images of moral decay and social disorder set the table for legislative efforts aimed at regulating street people and criminalizing homelessness. Whereas the former results in a type of “cultural cleansing” (cf. Noonan, 1996), the latter begins to approach ethnocidal proportions in its use of overt force, imprisonment, and concentration — constituting what Don Mitchell (1997a) has likened to a “pogrom.” Whereas Disneyfication denotes the friendly face of fascism, criminalization often represents its blatant brutality.

For at least six centuries, homelessness has been associated with “disorder” (e.g., Simon, 1996: 159) and “criminality” (e.g., Snow and Anderson, 1993: 11; Wright, 1997: 212), patterns that contemporary “official efforts to harass, punish, or restrict transient people who use public space are repeating” (Stoner, 1995: 151). Mitchell (1997a: 312) even suggests, quite appropriately, that we ought to be talking about “recriminalizing homelessness.” Constructing the other as disorderly and criminal requires the construction and maintenance of a dominant culture that embodies order and lawfulness. It is equally apparent that standards of civility and legality are generally determined by those in positions of power and advantage who manipulate such standards to suit their interests and protect their domains of property and authority. Thus, any construction of “otherness” as lawlessness necessarily becomes a self-fulfilling prophecy — as numerous sociological expositions of “labeling theory” have indicated (e.g., Lauderdale, 1980) — since one can only be guilty of violating a law *after* someone else passes it. In other words, it is the law itself that essentially creates the crime.

Such tautologies were prominently displayed in an article written soon after passage of a Seattle ordinance that criminalized sitting on sidewalks:

“This is not aimed at the homeless, it is aimed at the lawless,” says Seattle City Attorney Mark Sidran. By “the lawless” Sidran and other city officials mean people who, lacking anywhere else to go, sit down on the sidewalk. Jim Jackson, an Atlanta businessman, confidently declares that his city’s new laws will “not punish anyone but the criminal.” San Francisco’s Mayor Frank Jordan assures us that “homelessness is not a crime. It is not a crime to be out there looking like an unmade bed. But if criminal behavior begins then we will step in and enforce the law” (Howland, 1994: 33).

The logical flaw in this “official” position is all too apparent: “But if criminal behavior begins....” “We punish only the criminal.” “It is aimed at the lawless.” All of these statements are made in reference to conduct such as sitting on the sidewalk that, before passage of this recent spate of laws, had been legal and generally seen as innocent acts. Now, by virtue of a law prohibiting sitting, an entire category of people is made “criminal” for acts committed *before* the law existed! The lesson? If you want to eliminate a particular social class or subculture or deviant group, locate some behavior that is largely peculiar to that group and make it illegal. Alternatively, one may pass laws under the guise of universal applicability that plainly affect only the target community: “The law in its majestic equality forbids the rich as well as the poor to sleep under the bridges” (Anatole France, in Waldron, 1991).<sup>2</sup> In the end, as Waldron (1991) points out, “everyone is perfectly aware of the point of passing these ordinances, and any attempt to defend them on the basis of their generality is quite disingenuous.”

Returning to the first strategy suggested above, in which “the targeted



'behaviors' are those which characterize certain social classes" (IWW, 1994), the aim is simply to locate a behavior peculiar to the target group and criminalize it. With the homeless, it is very apparent: panhandling, sleeping in public, and sidewalk sitting. Despite frequent assertions that only "conduct" is being targeted and not "status" (e.g., Kelling and Coles, 1996: 40), it is clear that certain conduct attaches to specific groups, and that proscribing the conduct is equivalent to criminalizing the category. In some cases, as with teen curfews or "car cruising" laws, the prohibited conduct affects the target group's identities and liberties, but does not necessarily undermine their basic ability to survive. Neil Smith (1996: 225), however, observes that "the criminalization of more and more aspects of the everyday life of homeless people is increasingly pervasive." Likewise, Ferrell (2001: 164) notes that the daily lives of the homeless "are all but outlawed through a plethora of new statutes and enforcement strategies regarding sitting, sleeping, begging, loitering, and 'urban camping.'"<sup>3</sup> As Mitchell (1998a: 10) emphasizes, "if homeless people can only live in public, and if the things one must do to live are not allowed in public space, then homelessness is not just criminalized; life for homeless people is made impossible." The implications and intentions are all too clear:

By in effect annihilating the spaces in which the homeless *must* live, these laws seek simply to annihilate homeless people themselves.... The intent is clear: to control behavior and space such that homeless people simply cannot do what they must do in order to survive without breaking laws. Survival itself is criminalized.... In other words, we are creating a world in which a whole class of people simply cannot be, entirely because they have no place to be (Mitchell, 1997a: 305–311).<sup>4</sup>

According to Smith (1996: 230), "in the revanchist city, homeless people suffer a symbolic extermination and erasure."

An impressive and detailed body of work that illustrates and amplifies these points has been generated by Maria Foscarinis and various associates affiliated with her National Law Center on Homelessness and Poverty (NLCHP). A series of scholarly articles (e.g., Foscarinis et al., 1999; Foscarinis, 1996; Foscarinis and Herz, 1995; Brown, 1999), demonstrates beyond doubt an ongoing and pervasive national trend toward "the criminalization of homelessness," evidenced by the mounting number of cities and towns with laws prohibiting behaviors including "aggressive panhandling," "urban camping," and "sidewalk sitting."<sup>5</sup> In assessing the purpose of these laws, Foscarinis (1996: 22) notes that "some cities state expressly that their intention is to drive their homeless residents out of the city.... In other cases, the stated purpose is to remove homeless people from particular places, such as parks, streets or downtown areas.... Some target the 'visible' homeless with the goal of making them 'invisible.'" Noting certain negative effects of such laws in terms of public policy — including poor use of fiscal

resources, divisiveness, and a deepening of political and social tensions — Foscarinis (1996: 63) concludes that “criminalization responses to homelessness are inhumane, do not solve the problem, and are subject to constitutional challenge.”

In 1999, the NLCHP published an influential report (*Out of Sight — Out of Mind? Anti-Homeless Laws, Litigation, and Alternatives in 50 United States Cities*) that expanded on some of these important points. The report found that, in the cross-section of cities surveyed, 86% had anti-begging ordinances, while 73% had anti-sleeping laws. The presence of such laws and accompanying enforcement strategies was also found to constitute “poor public policy” by acting as barriers to self-sufficiency, unduly burdening the criminal justice system, wasting scarce municipal resources, and subjecting cities to legal liabilities and expenses. The report concluded that “criminalization is ineffective, counterproductive, and inhumane,” and suggested “alternatives to criminalization,” including expanded services, places to perform necessary functions, transitional and public housing, more employment opportunities, and greater cooperation among city officials, business people, and the homeless themselves (NLCHP, 1999; Foscarinis et al., 1999; Brown, 1999). Additional positive alternatives are noted in a subsequent article that analyzes the NLCHP report. Fabyankovic (2000) includes alliances formed between police officers, homeless advocates, and outreach workers; programs that help the homeless move toward self-sufficiency; compassionate approaches rather than law enforcement approaches; the development of police sensitivity training programs; the creation of a day labor center; and the mediation of disputes between property owners and the homeless.

Despite overwhelming and persuasive evidence that criminalization is an untenable and inhumane approach, the trend is increasing, as documented in the scores of articles on the subject in recent years (e.g., Moss, 1999; Lydersen, 2000; Tanner, 2002). A *Denver Post* column (Kulp, 2000) observes that “many local governments have responded [to a growing number of homeless people] by empowering police to basically ‘run them out of town’ through sweeps of homeless campgrounds, liberalized stop-and-search procedures, and laws against behaviors characteristic of the homeless. Known as the criminalization of homelessness, this response is seen in a spate of new laws passed in U.S. cities.” An earlier *London Guardian* piece (Pressley, 1996) also noted that “in more than 40 cities across the United States, the homeless are facing a determined push of new laws aimed at banishing them from the streets. What is notable now is the forcefulness with which these communities are attacking the problem — using the police as their main weapon. Even more striking is that many of the cities in the vanguard of the get-tough approach are among the country’s most liberal,” including Seattle, New Orleans, and San Francisco (O’Brien, 2001; Nieves, 2002). Other cities in this vanguard include Denver (*Rocky Mountain News*, 2000), Asheville and Chapel Hill, North Carolina (Barber, 1998; Blythe, 1998), Santa

Cruz, California (Herman, 1997), Austin, Texas (Duff, 1999), and Tucson and Tempe, Arizona (Tobin, 2000; Riordan, 1999).<sup>6</sup> As Simon (1996: 148) confirms, “in city after city, municipal decisions to use criminal sanctions to protect public spaces have come into conflict with efforts by civil rights advocates to prevent the criminalization of homelessness. Ironically, cities traditionally identified as liberal or progressive have seen some of the most bitter struggles.”<sup>7</sup>

Perhaps the most notable “liberal” city to apply criminalization is Berkeley, California, as indicated by a *New York Times*’ article (Nieves, 1998) on homeless youth there:

Whether they are scared or just plain fed up, plenty of people in the nation’s most famously liberal city want the youths, panhandlers, drug addicts, drinkers, and mentally ill homeless swept off Telegraph Avenue, the shopping district here mentioned in every tourist guide.... The police have been all over Telegraph Avenue, in squad cars, on bicycles, and in front of businesses.... The mayor said she is proposing a plan that involves both increased social services for the homeless youths and “tough love.” That includes pushing them off the streets with an anti-encampment ordinance.

Events in Cleveland, Ohio, depict like strategies that are plainly more “tough” than “love”:

“In a move to attract holiday shoppers downtown, Mayor Michael R. White has ordered stepped-up police patrols. The mayor said the patrols are aimed at keeping the city’s streets safer and will focus not only on shoplifters, muggers, and other criminals but also on panhandlers and homeless people sleeping on sidewalks” (O’Malley, 1999). “White said this ‘crackdown’ is designed to ‘move poverty out of sight so they (shoppers) will have a peaceful shopping season’” (Faith, 1999). “‘It’s not an issue of being anti-homeless,’ said the mayor. ‘It’s an issue of balancing everyone’s rights’” (O’Malley, 1999).

Interestingly, many of the articles and columns detailing ongoing patterns of criminalization also present various alternatives to criminalization that accord with, but also go beyond, those suggested by Maria Foscarinis and the NLCHP. In an article from Chapel Hill (Blythe, 1998), a local civil rights lawyer asserts that “the town needs to...have a comprehensive strategy for eliminating the poverty and racism that’s at the root of a lot of these problems.” In Berkeley, “homeless advocates said the city would be wiser to address the problems of homelessness, rather than criminalize the behavior of the people on the street” (Nieves, 1998). A *Denver Post* column (Kulp, 2000) aptly inquires: “When will governments realize they cannot solve the problem of homelessness through new laws, police action,

and incarceration? The causes are more complex.... If governments are sincerely concerned about reducing the visibility of the homeless, then a more rational and cost-effective strategy involves affordable housing, medical care, public transportation, decent-paying jobs, and patching up the holes in public benefit systems like disability and workman's compensation." A recent telephone survey of 500 Ohio residents conducted by the Coalition on Homelessness and Housing in Ohio (in Faith, 1999) reflects,

the public's strong belief that homelessness primarily is caused by external factors such as unemployment rather than internal factors such as mental illness or drug use.... Those surveyed overwhelmingly rejected proposals to "make life on the street more difficult and unpleasant until the homeless decide to leave town" as a possible remedy for homelessness. They strongly endorsed a fundamental shift in overall policy, and a move from large emergency shelters to smaller, geographically scattered permanent housing and programs that include job training and supportive services.... The poll seems to indicate that residents may understand better than our political leaders that the remedy for homelessness depends on jobs, affordable housing, and services — not criminalization.

Some of the more interesting alternatives have been suggested by the homeless themselves, as in Berkeley (Nieves, 1998): "Some of the young people have come up with their own plan, which they presented to the City Council last week. They promise that they will stop urinating and sleeping on Telegraph Avenue, pan-handle in smaller groups, keep their dogs on leashes, and pick up their trash. In return, they have asked the city to provide more trash cans, create a dog run, clean the public bathrooms more often, and open Berkeley's first shelter for young people." Cleveland's Lynn Key, one of the "first homeless targets" of crackdowns there, was equally pragmatic (O'Malley, 1999): "[Key] was sleeping on a warm steam pipe cover outside the county welfare building. Police told Key he had to move, but the homeless man refused, saying that he had been banned from downtown emergency shelters for a month for being drunk and that he had no place to go. Police arrested him, charged him with disorderly conduct, and took him to jail, where he spent the night. 'If you can't sleep in front of the welfare building at night, there's nowhere else in the world,' Key said. 'If the city doesn't want them on the streets, they should open City Hall and let them sleep in there.'"

### **Apology Rejected: The Incivility of "Civility"**

With anti-homeless ordinances rapidly proliferating, their proponents and apologists have redoubled their efforts to construct justifications for laws restricting conduct in public places. Standard justifications have included public health and safety, economics, and aesthetics (see NLCHP, 1999; Foscarinis, 1996).

Concerns of the “health and safety” variety essentially employ the “disease” image to depict the homeless as “unsanitary” and responsible for the “attraction of vermin” (Foscarinis, 1996: 57). “Economic” considerations include maintaining “commercial vitality” and preventing “urban decay” (NLCHP, 1999), merchants’ fears of losing clients and consumers’ fears of encountering homeless people, and promoting tourism and shopping (Foscarinis, 1996: 56). “Aesthetic” concerns are generally expressed in terms of preserving and protecting the “quality of life” of the community and often include overt desires to “remove ‘unsightly people’ from public view...and to make downtown areas ‘welcoming to all’” (*Ibid.*: 55). Evaluating such “aesthetic and pecuniary” justifications, Smith (1994) notes that even if effective, “it is deeply troubling to find a community valuing these interests more than the survival of street people.” As the NLCHP report observes, when it comes to health and safety concerns, “in most cases the presence of people sleeping, sitting, or lying down in public places, or peacefully soliciting alms, cannot reasonably be deemed a direct threat to public health or safety.” The report further notes that aesthetic concerns are often merely “a pretext for rationalizing biases against a certain group of people, or as an excuse for excluding certain people from public spaces based on stereotypes and stigmas.” Finally, with regard to economic concerns that the homeless are bad for business, such notions are inverted, since business is bad for the homeless.

Another theme of such “quality of life” campaigns, one that has become something of a mantra for its proponents, is the notion of “civility.” As Ellickson (1996: 1246) predicted, “cities, merchants, and pedestrians will increasingly reassert traditional norms of street civility.” One of the staunchest proponents of the concept has been Rob Teir (1998: 256), who begins from a premise that public spaces are primarily spaces of commerce, shopping, and recreation. Teir (1996) laments that “homeless people have taken over parks, depriving everyone else of once-beautiful places,” but believes that through “fair-minded law enforcement and ‘tough love’...urban communities can reclaim their public spaces.” Another proponent similarly notes that a “perception grew that [the homeless], and not the community as a whole, ‘owned’ the areas they occupied,” and concludes that efforts ought to be undertaken toward “reclaiming public spaces from ‘the homeless’” (Conner, 1999). Likewise, Chuck Jackson (1998), the director of a downtown Houston “business improvement district” (BID), claims that the homeless have “colonized public areas.” As Neil Smith (1996: 211) points out, however, a more accurate label for such “civility” arguments is “revanchism,” namely, the establishment of a vengeful policy bent on regaining original areas lost in war. “This revanchist urbanism represents a reaction against the supposed ‘theft’ of the city, a desperate defense of a challenged phalanx of privileges, cloaked in the populist language of civic morality, family values, and neighborhood security. It portends a vicious reaction against minorities, the working class, homeless people, the unemployed, women, gays and lesbians, immigrants.”

Nonetheless, proponents such as Teir (1996) continue to argue that “measures aimed at maintaining street order help mostly the poor and the middle class [since] the well off can leave an area when it gets intolerable. It is the rest of us who depend on the safety and civility of public spaces.” The problem is that it is precisely the “well-off” who have “stolen” and “colonized” the public places of the city, literally and legally converting supposedly prized havens of public space into exclusionary domains of private property. As Mitchell (1996: 164) observes, the concept of “civility” has often been invoked historically “to assure that the free trade in ideas in no way threatened property rights.” The essence of such “civility,” then, is to protect and reinforce private property claims (many of which include previously public spaces now converted to private ownership) advanced by “urban stakeholders,” including “central business district property owners, small business owners, real estate developers, and elected officials” (Conner, 1999). The Web site of the Downtown Tempe Community, Inc. (DTC), a pro-business lobbying entity, for example, emphasizes that “we seek ordinances that advance our strategy of order and civility in the public space. Working with our private property owners, we seek cooperation on interdependent security issues.”<sup>8</sup> The DTC further claims that such efforts have “made the downtown a safer place.” It must be noted that images of “public safety” and “community standards” specifically exclude the homeless and the poor from participation, since these groups are constructed as *not* part of the community, the public, or those with a stake in political decisions and city affairs.

Civility proponents, including DTC Executive Director Rod Keeling (Petrie, 1999), also emphasize that public behavior laws “apply to everyone equally” (Teir, 1998). They “ask all residents to observe minimum standards of public life” that will “put a stop to much of the anti-social conduct that is destroying property values and the quality of downtown life” (Teir, 1996), arguing that “civility ordinances demand that all citizens adhere to a reasonable level of behavior while operating in public space” (Jackson, 1998).<sup>9</sup> The homeless have no private spaces in which to perform “uncivil” functions such as eliminating and sleeping. As John Hannigan (1998: 9) opines, “it is easy to equate civility with a certain lifestyle.”

Claims such as Teir’s (1998: 290) — according to which the effect of ordinances prohibiting sleeping, begging, and sitting on sidewalks is “preserving welcoming, attractive, and safe public spaces for all of us to use and enjoy” — amount to little more than “cynical hucksterism” (*cf.* Hannigan, 1998: 9). Plainly, “all are welcome” — except the homeless and others who threaten to undermine bourgeois consumerist values. Civility proponents also seem to have little interest in “preserving public spaces,” but in fact are often the chief advocates and direct beneficiaries of processes of privatization that are eroding the city’s public spaces. Ironically, the homeless themselves function to preserve public spaces as democratic, spontaneous, and inclusive. They are not the colonizers of public space, but are rather — like the proverbial canary in the coalmine — the immediate victims of its colonization.

### Breaking Down “Broken Windows”

Another significant justification for anti-homeless laws, one that has received much attention and critical treatment, is the “broken windows” theory. Originating in a landmark *Atlantic Monthly* article, the theory’s chief proponents, James Wilson and George Kelling (1982), argue that “disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend to agree that if a window in a building is broken and left unrepaired, all the rest of the windows will soon be broken.” The authors go on to hypothesize that “serious street crime flourishes in areas in which disorderly behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window.” They conclude that “the police — and the rest of us — ought to recognize the importance of maintaining, intact, communities without broken windows.” In other words, the aim ought to be the maintenance of communities without “broken people,” since they represent the source and origin of the crime problem, the first step on the slippery slope from “untended property” to “untended behavior” to “serious street crime.”

Robert Ellickson (1996: 1171, 1182) attempts to link one step to the next in this suspect syllogism: “A regular beggar is like an unrepaired broken window — a sign of the absence of effective social-control mechanisms in that public space.... Passersby, sensing this diminished control, become prone to committing additional, perhaps more serious, criminal acts.” Wilson and Kelling (1982) attempt to support the progression from “disorder” to “serious crime” by citing studies in which “untended property” (such as a parked car with its hood up) was found to lead eventually to the complete vandalization of that property, suggesting that “untended behavior [exemplified by the ‘unchecked panhandler’] also leads to the breakdown of community controls,” and that in short order, “such a neighborhood [becomes] vulnerable to criminal invasion.”

The broken windows theory has become a cornerstone of “community policing” programs premised upon “aggressive order maintenance” and a proactive, “interventionist police strategy” (Kelling and Coles, 1996; Kelling, 1999). Given its widespread implementation and the obvious implications for the proper function of police in society, the theory has been roundly criticized from a number of fronts. The first wave of critical questions was raised by Wilson and Kelling (1982). Upon noting that “society wants an officer to have the legal tools to remove undesirable persons,” they ask: “How do we ensure that the police do not become the agents of neighborhood bigotry?” Disturbingly, they respond to this crucial concern of equity by stating: “We can offer no wholly satisfactory answer to this important question...except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority.” Thus, in terms of deciding who is deemed “undesirable” and subject to intervention and removal, the sole check on police harassment or

discrimination is to be the discretion of the police themselves.<sup>10</sup> A subsequent study called *Fixing Broken Windows* (Kelling and Coles, 1996: 256) even concludes: "Can citizens go too far? Will there be injustices? Yes, at times." In a more recent work, Kelling (1999) admits that "order maintenance has the potential for abuse, [since] police have used vagrancy, loitering, and panhandling laws to harass citizens and discriminate against groups in the past, [and] since policing teeters near the edge of militarism in so many locations." The response to these concerns is that "police discretion" will somehow avoid such eventualities, notwithstanding the remarkable fact that "police are almost uniformly unable to articulate what they do, why they do it, and how they do it...virtually all of their order maintenance, peacekeeping, and conflict resolution activities are unofficial" (Kelling, 1999).

Beyond the critiques suggested (and weak responses offered) by the theory's primary architects and apologists, many scholars and commentators have denounced "broken windows" as discriminatory in intent and application, fundamentally unfair, logically flawed, and unsupported by studies of criminality and behavior. Jeremy Waldron (2000), for example, asks two related and pointed questions: (1) "Relative to what norms of order are bench squatters or panhandlers or smelly street people described as 'signs of disorder'?" and (2) "What is to count as *fixing* the window, when the 'broken window' is a human being?" In addressing the first, Waldron's answer is in the form of a question reminiscent of objections raised to the "civility" proponents: "Are these the norms of order for a complacent and self-righteous society, whose more prosperous members are trying desperately to sustain various delusions about the situation of the poor?" In terms of the second, Waldron notes that "giving him money" is not an accepted response under the theory, nor is the provision of "public lavatories and public shower facilities. Instead, fixing the window is taken to mean rousting the smelly individual and making him move out of the public park or city square...as though the smartest way to fix an actual broken window were to knock down the whole building, or move it to just outside the edge of town." Unless attention is paid to the factors contributing to *what caused the window to break in the first place*, "fixing" the window is only a band-aid solution, since more broken windows are likely to develop from the same socioeconomic conditions.

The NLCHP (1999) asserts that the theory "raises serious concerns about basic fairness. First, punishing one group of people to prevent future criminal activity by others runs afoul of the basic notions of equality underlying our criminal justice system." Indeed, the theory is premised *not* on the notion that "a single broken window" will lead to additional or more serious crimes by the person who broke the window, but rather that *others* (including passersby and "ordinary" citizens) will somehow be tempted by the appearance of disorder to commit crimes of property and person. Asking police officers to discern and even remove individuals based on the likelihood that their mere presence will cause



other people to commit crimes is unfair, absurd, and almost certain to lead to myriad abuses of authority.

Maria Foscarinis (1996: 57) raises a related set of objections. She cites evidence that “homeless people are not more likely to be perpetrators of serious crime than anyone else; in fact, they are more likely to be victims. Further, there is evidence that the majority of the public does not perceive homeless people as perpetrators of crime.” Smith (1994) concurs that “the fear of homeless crime that prompts police sweeps is grossly disproportionate to the levels of homeless crime suggested by available empirical evidence.” He adds, “with an arrest rate for violent offenses significantly lower than that for domiciled males, it would appear that the homeless certainly are no more, and probably less, likely to commit crimes of violence than the general population.” For example, “police in Austin, Texas, are ‘keenly aware that neighborhood claims and fears [regarding homeless criminality] had little empirical substance.’” As Kress (1995: 97) opines, “the correlation between homelessness and crime is, at best, tenuous.... Several studies have been conducted that lay to rest the belief that homelessness causes crime. According to [one study], among the homeless, arrestees were more likely to have committed trivial, victimless crimes, and to have engaged in acts related to surviving in the absence of housing.” The net effect is that the homeless are being punished not only for crimes they didn’t commit, but also for crimes others have not yet committed, which flies in the face of equity and fairness.

A final objection to “broken windows” as social policy is suggested by Waldron (2000) in the implicit derogation that comes when human beings are compared “even figuratively to *things*.” Waldron wonders what would have ensued if Wilson and Kelling’s article had been titled “Broken People.” The central premise of the theory thus rests on a blatant form of *dehumanization*, figuratively in its principles, but literally in its widespread deployment as the cutting edge of urban social policy. This is another way of expressing the tired and dangerous characterization of the homeless as pathological deviants or structural victims and serves to undermine their agency, autonomy, and dignity. However, the impressive adaptability, social solidarity, and inherent resistance often demonstrated by street people and their communities of coping (see Amster, 1999) effectively rebut such dominant conceptions, as Mitchell Duneier (1999: 315) implies in *Sidewalk*:

Because Americans ruthlessly use race and class categories as they navigate through life, many citizens generalize from the actual broken windows to all the windows that look like them — and assume that a person who looks broken must be shattered, when in fact he is trying to fix himself as best he can. Only by understanding the rich social organization of the sidewalk, in all its complexity, might citizens and politicians appreciate how much is lost when we accept the idea that the

presence of a few broken windows justifies tearing down the whole informal structure.

Duneier goes on to suggest that allowing survival activities such as panhandling can actually *prevent* more serious crimes, implying a sort of “reverse broken windows theory” that Tempe’s “Kevin” (interview, 2000) intuitively grasps: “Would you rather have me spare-changing — or selling drugs to your kids or breaking into your house?”

### **Policing “Pleasantville”: The Private Security Matrix**

A recent study on “Policing Entertainment Districts” (Berkley and Thayer, 2000) analyzes the practices and policies utilized in “every entertainment district known to the authors” (nearly 40 in all), in cities such as Houston, Cleveland, New Orleans, Denver, Seattle, Austin, Philadelphia, and downtown Tempe. The study begins by noting that “urban redevelopment [is] now driven by entertainment,”<sup>11</sup> that “responsibility for managing entertainment districts inevitably falls on the police department,” and that such districts “are naturally appealing to transients and panhandlers [who] contribute to a perception of lawlessness and are primarily a problem during the day when they sit in front of businesses and scare away patrons.” The authors go on to observe that “business owners want officers to maintain a friendly profile while simultaneously running off gang members and those with no money to spend.” This leads to a process in which “undesirables” are “contacted and discouraged long before they reach core entertainment areas.” Those who make it into the district can be “marked for surveillance or shadowed.” Identification of “undesirables” in the study is based on responses from police managers in 30 districts, and “troublemakers expect trouble and dress accordingly, while those in fine clothes” tend not to be a problem. For the police managers, “transients and panhandlers” were the most problematic, and “police department interaction with merchant associations” was deemed the most effective method for preventing problems in the districts.

Business improvement districts (BIDs) play a role in policing entertainment districts in particular and urban space in general, since “the typical BID involves a quasi-law enforcement force whose job includes, in large part, removing people who appear to be homeless from the BID areas” (NCH/NLCHP, 2002). Besides “arresting beggars” (Parenti, 2000: 96), BIDs “typically focus on ‘broken windows’ in the literal sense, cleaning streets and providing a visible, uniformed presence, all toward the goal of making public spaces more inviting” (Conner, 1999).<sup>12</sup> Kelling and Coles (1996: 199) note that many BIDs have a “uniformed presence” that often serves as the “eyes and ears” of the police, and they are in “radio contact with the police, and are trained to report suspicious behavior.” Parenti (2000: 96), however, asserts that such “private security forces [have] surpassed the cops as the main violators of street peoples’ rights,” yielding a

“private security matrix...where rent-a-cops are imbricated into the larger policing project through a delicate division of labor: private forces control interior spaces, aid the police in holding pacified streetscapes, and even launch offensives against nonviolent undesirables.” Thus, Jones and Newburn (1999: 106) discern that “a ‘new feudalism’ is emerging, in which private corporations have the legal space and economic incentives to do their own policing. In this view, mass private property has given large corporations a sphere of independence and authority which can rival that of the state.” The result, identified by Hil and Bessant (1999: 42), is that “police and [private] security personnel seek to exclude young people [and other undesirables] from such places so that they can be ‘purified’ and ‘reclaimed’ for more ‘legitimate’ consumptive purposes” — an outcome that Parenti (2000: 97) appropriately terms “free-market social hygiene.”

In Tempe, the DTC and its private security force, TEAM (Total Events and Management), embody all of these practices, as noted by Berkley and Thayer (2000):

Private security can be effective, even on public streets, as a presence and deterrent, as a means of urging voluntary compliance, and as a first stage in an escalation. If they cannot gain voluntary compliance, they simply call the police. For example, the Downtown Tempe Community, Inc., uses private security to serve as eyes and ears for the police department and to provide a low-contact variety of security. TEAM guards are young, mostly untrained, and unarmed, but effective nonetheless. On Friday and Saturday nights, TEAM makes 60 percent of all calls to the police department from the downtown area. When bicycle officers arrive to trouble spots, TEAM watches the bicycles.

DTC’s literature notes that it has “increased relations with the Tempe Police Department to ensure criminal activity within the homeless population was curbed.” To that end, the DTC was able to “directly affect the arrest of 8 individuals engaged in illegal activity and provide information on criminal activity to the police officers assigned to the downtown.” The DTC’s Web site observes, “through our Downtown Ambassador Program and private security contractor, we serve as crowd watchers and crime reporters for the police.”<sup>13</sup>

In early 2001, however, the DTC severed official contractual ties with TEAM, which is now employed by DMB Associates, a commercial development company with one of the largest private property stakes in downtown Tempe, including the “Centerpoint” retail complex. As Rod Keeling (DTC, 2001) explains:

The DTC has a long-standing relationship with our Police Department. Over the years, the relationship has evolved and refined to the point where other cities around the country are looking at how we work together.... Earlier this year, the DTC made a fundamental change to our

downtown safety program. We discontinued contracting with a security guard company and turned our focus on our Ambassador program. Our DTC Ambassadors are crowd watchers and crime reporters for the police but they are not security guards. We want to assist the police, not take the place of them. We believed then and are convinced now that our move from street security to street concierge presents a better image for downtown Tempe without compromising safety. In fact, downtown is safer than ever before. Now it's friendlier too. Just look for the teal shirts.

With all those "crowd watchers" (i.e., *voyeurs*) and "crime reporters" (i.e., *snitches*) in place, the feeling of "security" is indeed palpable.

### **Cleaning Up, Cracking Down, and Ordering Out**

The face of "social hygiene" presented by such scenarios isn't quite so "friendly" for Tempe's homeless residents, who experience regular "sweeps" and "ID and warrant checks" (Kevin interview, 2000), as well as episodes in which "the cops'll go out and find our squats and burn all our clothing, our IDs...they harass us all the time" (Katy interview, 2000).<sup>14</sup> As the Salvation Army's Julie Cart (interview, 2001) notes, "everyone out there living on Tempe streets has been arrested...it's part of their lives." In this regard, Gregg Barak (1991: 85) reports the results of a study of police harassment of the homeless in San Francisco. Based on a survey of almost 300 street people, 96% reported having been told to "move along" when doing nothing wrong; 93% had been ordered to produce identification without cause; 80% said that their body, clothes, or possessions had been searched for no reason; and 50% had been "physically beaten or brutalized by a police officer." As one possible explanation for why the homeless suffer such affronts and attacks at the hands of the police, Don Mitchell (1997b: 393) observes that "the homeless so effectively challenge the *authority* of the police. They challenge the police's *competence* to control space." In Tempe, "Kevin" (1999, 2000) in particular has been a frequent target of this spatial battle, having been arrested 43 times in a three-year period (1997 to 2000) for offenses such as public consumption of alcohol, trespassing on private property, and public urination.<sup>15</sup>

These patterns of enforcement are so common in Tempe that the lead researcher on a city-sponsored "homeless needs assessment" study told the city council on the night it was submitted (November, 26, 2000):

Doing the report has been a real eye-opener. It is very disturbing as a Tempe resident to see the harassment of people who are homeless in Tempe. Being homeless has itself been criminalized. I have seen people harassed by the police and TEAM in Tempe. Where is our public space? The dehumanization of it all really disappoints me, and I hope that tonight

is the first step in stopping this criminalization. These are our residents and they shouldn't be treated as they are.

Despite such sentiments, the enforcement situation in Tempe has worsened since the time of the "needs assessment." A particularly sinister trend has been the imposition of fines on homeless defendants convicted of petty offenses. "Katy" (2000), for example, a middle-aged homeless woman in Tempe, incredulously describes how she received a fine for drinking in public: "A \$285 ticket! Where the heck is a homeless person gonna get \$285 to pay them off? That's pretty stupid, I mean, get real." Tempe's "Bill" (2000) likewise refers to such fines as "extortion money," and notes that the result is usually that "an unpaid fine then becomes an arrest warrant, so the next time they run your ID, you're goin' to jail" (*cf.* Howland, 1994). With such punishments in mind, offhand comments such as Kelling and Cole's (1996: 15) that public disorder laws are usually "punishable *only* by fines or community service" come across as particularly cruel. As for the "community service" option, the DTC Web site touts "increased relations with the Tempe City Court that allow the homeless to complete their community service by working to clean up the downtown under the direction of the DTC." Apparently, the micro-republic of the DTC, like its alter ego the city of Tempe, now possesses the power of punishment and criminal corrections. In fact, a recent report on homeless criminalization in the United States (NCH/NLCHP, 2002) has properly criticized such "alternative sentencing" schemes as "the newest marketing tool for public safety advocates who cloak their 'urban cleansing' policies in social service language."

A further enforcement wrinkle in Tempe appeared in a joint DTC-Police Department pronouncement that a "new crackdown on panhandlers and sidewalk sitters" would commence in early 2002, a scheme in which the police are "encouraging businesses to act as witnesses to help make arrests" (Davis, 2002). "Right now we are on a mission to reeducate businesses that they can be witnesses," Tempe police Sergeant Noah Johnson told the *ASU State Press*. "Businesses can aid in arrests like individuals can," he said. For their part, the DTC (through operations manager Chris Wilson) stressed that "now, businesses can call police if one of their customers is panhandled, as long as someone saw it happen" (in Davis, 2002).<sup>16</sup> "The police are finally coming around," Wilson said. "They realize that if they can get rid of low-level crimes and criminals, then the big crimes will disappear with them." Given the inherent illogic of these "broken windows" policies, the self-fulfilling nature of such constructions of "crimes and criminals" is apparent. The DTC's (2002a) account of this new police crackdown is revealing:

Thanks to the Police Department, downtown Tempe may become a safer and more friendly place. On Thursday, Dec. 27, Officer Whit Roesch made an important arrest. He took into custody a young man who was aggressively panhandling on the corner of Fifth and Mill Avenue in front

of Starbucks. This arrest marked the first of a new campaign to crack down on aggressive panhandlers. The new crusade has sprung from clarification of a certain city code that states that officers need only have witnesses to the panhandling, not necessarily the victim. This will allow many more arrests of aggressive panhandlers, making Tempe a safer place.

This “new crusade” includes a punitive and exclusionary twist called an “Order Out,” which is “a stipulation to the parole of people arrested under the panhandling city code [mandating] that the person arrested could not return to that district, in this case downtown Tempe” (DTC, 2002a). Such “ordering out” is not what one might ordinarily think of in a city full of restaurants and eateries — an irony evident in the fact that many homeless panhandlers are begging for food or money to buy it. Then again, perhaps starvation is an (un)intended “benefit” of such blatantly discriminatory and brutally exclusionary schemes.<sup>17</sup>

### **Conclusion: From Criminalization to Extermination**

Unsurprisingly, the “extermination” scenario is never far from the surface of the homeless experience, since it is the logical aim of these myriad policies and practices of *criminalization*. As Madeleine Stoner (1995: 161) notes,

the images of homeless sweeps are reminiscent of holocaust roundups in Nazi Germany. To dramatize the message that homeless people are not welcome, police officers frequently conduct large-scale campaigns in which they arrest homeless people, handcuff them, mark their arms with identification numbers, drive them to the police station where they await formal charges for hours without food and water, and finally drive them to the edge of town after detention, drop them off, and tell them not to return.

Samira Kawash (1998: 336–337) likewise describes an “increasingly vengeful war on the homeless” in which “both threats and acts of violence are necessary to maintain this exclusionary force.” As Tempe’s “Bill” (2000) laments, “it’s like Gestapo Germany around here.”

Street people are repeatedly subjected to “violent processes of containment, constriction, and compression that seek not simply to exclude or control the homeless but rather to efface their presence altogether” (Kawash, 1998: 330). Much of this overt and recurring violence logically flows from the fact that little in the lives of the homeless takes place behind closed doors, yielding a condition of having “no place to perform elementary human activities” (Waldron, 1991). Constrained to exist in public places, the homeless are constant targets of regulation, criminalization, expulsion, and erasure. They are at once exceedingly obvious, and yet ghost-like in their transparency; they are “visible and invisible at

the same time" (Miller, 1991: 164). Thus, to be homeless means having "nowhere else to go" (Waldron, 2000) and having "lost entitlement to any existential ground" (Davis, 1990). As "Katy" (2000) muses: "What're they gonna do, put us on a rocket ship and send us to Mars? I mean, where the heck is the homeless gonna go, besides Tempe?" Kawash (1998: 326) adds, "there is no place in the contemporary urban landscape for the homeless to be," and "to be homeless is thus to be thrust into the public without recourse." Waldron (2000) defines homeless people as those who "have no private space" and are thus left with "no alternative but to be and remain and live all their lives in public." He raises the obvious dilemma that the homeless are excluded from all the places governed by private property; since private and public places exhaust all the possibilities, there is nowhere for the homeless to perform basic survival actions. Thus, "such a person would not be permitted to exist" (Waldron, 1991).

As an antidote to the philosophical and pragmatic horrors of such extermination scenarios, homeless advocates must "discover ways to make the violence written on the homeless body legible" (Kawash, 1998). Throughout my investigations of homeless policymaking, such principles, grounded in the material conditions and lived experiences of street people, have guided me, as has my desire to "make the violence legible" through discourse and activism.

## NOTES

1. A relevant example here is that: "Tempe's mayor supports *individual culpability* for homelessness, identifying the homeless problem in Tempe as primarily related to 'packs of kids' choosing to be homeless and frequenting the downtown area.... Business organizations also emphasize the *individual deviancies* of the homeless and actively pressure public officials to reduce homeless access and resources" (Brinegar, 2000: 510).

2. As Mitchell (1996: 166, 171) notes, in "asserting the primacy of property rights," the lawgivers "often struggled to couch those rights in a universal language that masked the class-based nature of their rulings. This universal language typically was a language of civility and order.... Orderliness can thus quite easily serve power."

3. Legal scholars such as McConkey (1996) and Baker (1990) assert that prohibitions against conduct associated with basic survival come dangerously close to violating the Supreme Court's proscription against "status crimes," and suggest the interposition of a "necessity defense" when there is no other choice presented to people charged with crimes regarding acts such as sleeping and eliminating.

4. See also Howland (1994: 34): "If sleeping in public places is illegal, that means at least 325,000 people are faced with the nightly choice of breaking the law or staying awake."

5. Numerous other studies confirm the growing appearance and application of "anti-homeless legislation," including Baker (1990), Barak (1991), Smith (1994), Millich (1994), Stoner (1995), NCH (1997), Munzer (1997), Mitchell (1998a, 1998b), and NCH/NLCHP (2002).

6. The latter article is subtitled "Tempe follows college towns' trend of tougher restrictions," and notes that "the Valley's liberal college town has attacked personal liberties with a slew of restrictive laws."

7. Though there is no obvious single reason for this trend, some possible explanations include: (1) "liberal" cities have often been viewed by the homeless as more tolerant and welcoming, thereby

increasing the number of homeless in such cities; (2) many of these “liberal” cities are in the “new West,” where development schemes are fast being implemented, causing immediate spatial conflicts with homeless populations; and (3) “liberalism” as a socioeconomic philosophy entails the growth of corporate hegemony and managerial values, processes that can contribute to homeless exclusion.

8. See [www.downtowntempe.com](http://www.downtowntempe.com).

9. In response to Jackson’s assertions, a Houston alternative paper (Liskow, 1999) maintained that “in reality, civility ordinances would primarily target street people.”

10. “More importantly, in relying on police to distinguish between desirable and undesirable elements in the community, there is no way to ensure that the criteria they use to make these distinctions will not be invidious or impermissible ones.... The likely success of the only safeguard suggested by [Wilson and Kelling] — appropriate selection, training, and supervision of police officers — is belied by examples of discriminatory enforcement of criminal laws and ordinances by police officers across the country” (NLCHP, 1999).

11. See Zukin (1997).

12. See also Mealer (1999) and Jackson (1998) on how the directors of BIDs in Austin and Houston are “firm believers” in the broken windows theory. The DTC’s Web site likewise notes that “we seek ordinances that advance our ‘Fixing Broken Windows’ strategy.”

13. The origins of private security in downtown Tempe are instructive, as explained by the DTC’s *Downtowner* newspaper (2000a): “Mill Avenue and downtown Tempe have seen many changes in the last century with the most dramatic coming in the last ten years. As Tempe has evolved, so has TEAM to meet the needs of this growing community. During the weekly gatherings of eclectic and diverse groups, conflicts arose. Several business owners asked Mick Hirko to help and TEAM was started to provide security for downtown Tempe. Today, 250 TEAM members do everything from keeping parking safe to answering visitors’ questions and providing security services to businesses. ‘TEAM exists because of downtown Tempe,’ said Hirko. ‘And we’re dedicated to its future.’” A subsequent article (DTC, 2000b) adds: “TEAM watches the Tempe community as if it were their home — because that’s exactly what it is. TEAM’s patrol service roams the downtown Tempe area, checking properties on a regular schedule seven days a week. Late in the night, after restaurants and bars have closed and most people have gone home, TEAM can be found looking for break-ins, checking doors, observing suspicious behavior and coordinating with the Tempe Police Department to keep the downtown area safe.”

14. A joint report by the National Coalition for the Homeless (NCH) and the NLCHP (2002) confirms the prevalence of such practices: “People who are homeless routinely report losing their possessions, identification, medication, and employment as a result of being arrested. When homeless people are arrested, they lose whatever tenuous hold they have on getting their lives ‘back together.’” See also Lechuk (2001), who notes that San Francisco often “throws out personal belongings and medication.”

15. Though I remain critical of such policies, there are hopeful examples. Recently, New York City police officer Eduardo Delacruz “was suspended for 30 days without pay after he refused a sergeant’s order to arrest a homeless man found sleeping in a parking garage. In gratitude, organizations for the homeless put together a fund for the officer, his wife, and five children. Homeless people also contributed change scrounged from passersby, money earned from recycling cans and bottles, even a portion of their welfare checks. According to police, Delacruz told his superiors in the department’s Homeless Outreach Unit that he would not arrest a homeless man for trespassing because the man had nowhere else to go” (Williams, 2002).

16. However, in their *DTC Insider* publication, the DTC (2002b) asserts that, “thanks to clarification of a city code, Tempe police officers no longer need a victim’s account of aggressive panhandling to make an arrest — businesses, or individuals may act as witnesses. Downtown businesses may now notify police of aggressive panhandling themselves, rather than waiting for someone else to report these activities. The reports may be made anonymously, as well.”

17. An example of these patterns arises from events in Asheville, North Carolina (Barber, 1998):



"I started hearing how kids were being chased away by police for sitting downtown during the day,' [one resident] relates. 'There were a lot of stories floating around about kids being shook down by cops, which means they run your ID or flip through your bags for no apparent reason, other than you're sitting there and you look different.' According to Asheville Police Chief Will Annarino, these young people's behavior often violates specific city ordinances. He denies that the police are harassing the kids, saying officers are merely doing their job by responding to merchants' complaints. Annarino admits that certain selective law-enforcement practices come into play, but he insists that those practices are based not on cultural biases but on economics. 'We have to make tough decisions every day on how to best utilize our personnel in direct reaction to complaints from citizens,' adding that the majority of complaints come not from kids who feel harassed but from merchants and tourists. 'The merchants demand that their rights not be violated,' Annarino explains. Some kids charge that the police are using far more force than is necessary to respond to nonviolent crimes, crossing the line into undue aggression and outright harassment. Annarino admits that some ordinances are now being enforced more aggressively than before, but he says this is simply due to the increased police presence. Annarino denies knowledge of any such incidents. 'All I can say is that officers sometimes use their discretion in matters like these,' he observes. Some merchants say they have no interest in compromise: They just want the street people cleared out, period."

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## Chapter I

# The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States

*Don Mitchell*

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“Globalization” is a powerful ideology. The popular media are enthralled with the idea. Space, it seems from reading the papers and watching the news, has simply ceased to exist. [. . .]

Yet as a number of geographers have shown [. . .] globalization is in fact *not* predicated on the “annihilation of space by time,” no matter how evocative that metaphor may be, but rather on the constant production and reproduction of certain *kinds* of spaces. For capital to be free, it must also be fixed in place. [. . .] Not just at the global scale, but in all the locations that capital does business, perpetual attempts to stave off crisis by speeding up the circulation of capital lead to a constant reconfiguration of productive relations (and productive spaces). Together these trends – toward rapid turnover, and toward the concomitant appearance of globalization – create a great deal of instability for those whose investments lie in fixed capital, especially the fixed capital of the built environment. While capital could never exist without some degree of fixity – in machines and buildings, in roads and parks – the very unevenness of capital mobility lends to places an increasing degree of uncertainty. Investment in property can be rapidly devalued, and local investors, property owners, and tax-collectors can be left holding the bag. Or not. Together or individually, they can seek to stabilize their relationship with peripatetic capital by protecting long-term investment in fixed capital through tax, labor, environmental, and regulatory inducements. But this process in itself can lead to a frenetic place-auction, as municipalities and states compete with each other both to attract new investment and to keep local capital “home.”

This is precisely where the ideology of globalization is so powerful: by effectively masking the degree to which capital must be located, the ideology of globalization

allows local officials, along with local business people and property owners, to argue that they have no choice but to prostrate themselves before the god Capital, offering not just tax and regulatory inducements, but also extravagant convention centers, downtown tourist amusements, up-market, gentrified restaurant and bar districts, and even occasional public investment in such amenities as museums, theaters and concert halls. Image becomes everything. When capital is seen to have no need for any particular place, then cities do what they can to make themselves so attractive that capital – in the form of new businesses, more tourists, or a greater percentage of suburban spending – will want to locate there. If there has been a collapse of space, then there has also simultaneously been a new, and important reinvestment in *place* – a reinvestment both of fixed (and often collective) capital and of imagery. For Kirsch (1995:529) a world thus structured leads to the obvious question: “what happens to space *after* its collapse; how do these spatiotemporal transformations impact our everyday lives . . . ?”

For many cities in the United States, the answer to this question, quite perversely, has led to a *further* “annihilation of space” – this time not at the scale of the globe and driven by technological change, but quite locally and driven by changes in law. In city after city concerned with “livability,” with, in other words, making urban centers attractive to both footloose capital and to the footloose middle classes, politicians and managers of the new economy in the late 1980s and early 1990s have turned to what could be called “the annihilation of space by law.” That is, they have turned to a legal remedy that seeks to cleanse the streets of those left behind by globalization and other secular changes in the economy by simply erasing the spaces in which they must live – by creating a legal fiction in which the rights of the wealthy, of the successful in the global economy, are sufficient for all the rest. Neil Smith (1996:45) calls this the “revanchist city” because of what he sees as a horrible “vengefulness” – by the bourgeoisie against the poor – that has become the “script for the urban future.” Whatever the accuracy of this dystopian image (and it seems quite an acute reading to me), cities seem to have taken Anatole France at his word, ignoring the clear irony in his declaration that the law, in all of its magisterial impartiality, understands that the rich have no more right to sleep under bridges than do the poor. Such irony can only be so easily ignored if we somehow also agree, in the “impartial” manner of the law, that the poor have no greater need to sleep under bridges – or to defecate in alleys, panhandle on streets, or sit for a length of time on park benches. For this is what the new legal regime in American cities is outlawing: just those behaviors that poor people, and the homeless in particular, must do in the public spaces of the city. And this regime does it by legally (if in some ways figuratively) annihilating the only spaces the homeless have left. The anti-homeless laws being passed in city after city in the United States work in a pernicious way: by redefining what is acceptable behavior in public space, by in effect annihilating the spaces in which the homeless *must* live, these laws seek simply to annihilate homeless people themselves, all in the name of recreating the city as a playground for a seemingly global capital which is ever ready to do an even better job of the annihilation of space.

The purpose of this paper is to explore the nature and implications of antihomeless laws – and their relationship to the ideology of globalization and “livability” – in four main areas. First I will examine the changing legal structure of public space in American cities, focusing specifically on the rash of laws passed in the

1980s and 1990s that seek to limit the actions of homeless people. This section will begin the examination of the implications of these laws by questioning not only the discourses surrounding the laws, but also the effect the laws have on the freedoms accruing to homeless people. I will show how these laws attempt not just the annihilation of space, but also the annihilation of the people who live in it. Second I will show how these changes in the legal structure of public space serve an increasingly nervous bourgeoisie as it seeks to grapple with insecurities endemic to the economy. This section explores some of the economic roots of anti-homeless legislation. The ways in which economic logics come together with a language of morality to recreate the public sphere after an image of exclusivity is the topic of the third section. My argument here is that anti-homeless laws both reflect and reinforce a highly exclusionary sense of modern citizenship, one that explicitly understands that excluding some people from their rights not only as citizens, but also as thinking, acting persons, is both good and just. Here, then, not only do I explore the implications of these laws in terms of the effects on citizenship and the public sphere; I also complicate the economic analysis of the previous section by showing how the laws also have roots in long-standing ideological or cultural concerns about the relationship between the deviant poor and the up-standing bourgeoisie. In the final section I show that, lurking within the discourses surrounding anti-homeless laws is a concern with urban – or more broadly landscape – aesthetics. The recent wave of anti-homelessness, and the laws that reinforce it, raise important and related questions of, first, the relationship between aesthetics and economy, and second, the relationship between public space and landscape. At the risk of oversimplifying, I will suggest that public space and landscape should be seen as oppositional ideals, oppositional ideals that say much about how we regard the construction and purpose of the public sphere.

### **Anti-homelessness Laws and the Annihilation of the Homeless**

No one is free to perform an action unless there is somewhere he is free to perform it. . . . One of the functions of property rules, particularly as far as land is concerned, is to provide a basis for determining who is allowed to be where (Waldron, 1991:296).

Consider this incomplete but by now quite familiar litany, a litany that shows so clearly how the annihilation of space by law is proceeding:

- In San Francisco, laws against camping in public, loitering, urinating and defecating are being enforced with a new-found rigor even as the city repeatedly refuses to install public toilets.
- In Santa Cruz, Phoenix, St. Petersburg and countless other cities, it is illegal to sleep in public.
- In Atlanta and Jacksonville, it is a crime to cut across or loiter in a parking lot (in Atlanta in May, 1993, at least 226 people were arrested for “begging, criminal trespass, being disorderly while under the influence of alcohol, blocking a public way or loitering in a parking lot” [*Atlanta Journal and Constitution* July 12, 1993]).
- In New York, it is illegal to sleep in or near subways, or to wash car windows on the streets.



- In February 1994, Santa Cruz contemplated following Eugene, Oregon and Memphis, Tennessee's lead by requiring beggars to obtain licenses, a process that would include fingerprinting and photographing potential beggars, and requiring them to carry their photo-license at all times.
- In Baltimore, police were empowered to "move along" beggars even as it found its aggressive panhandling law overturned by a federal judge.
- In May, 1995, Cincinnati made it illegal to beg from anyone getting in or out of a car, near automatic teller machines, after 8 pm, or within six feet of any storefront; the city also made it illegal to sit or lie on sidewalks between 7 am and 9 pm; Seattle and a dozen other cities have similar laws.

The intent is clear: to control behavior and space such that homeless people simply cannot do what they must do in order to survive without breaking laws. Survival itself is criminalized. And as David Smith (1994:495) argues, the "supposed public interests that criminalization is purported to serve" – such as the prevention of crime – "are dubious at best." Instead, there are, as we shall see, numerous other reasons for criminalizing homelessness, reasons that revolve around insecurity in an unstable global market and a rather truncated sense of aesthetics developed to support the pursuit of capital. Sometimes, as in the Seattle example outlined below, authors of anti-homeless legislation are quite honest in their reasoning, even if they still like to wrap that reasoning in a mantle of crime prevention. The hope is simply that if homeless people can be made to disappear, nothing will stand in the way of realizing the dream of prosperity, social harmony, and perpetual economic growth. Anti-homelessness legislation is not about crime prevention; more likely it is about crime invention. [. . .]

### *Sleepless in Seattle*

[. . .] [T]he cutting edge for these sorts of restrictions probably rests with Seattle [. . .].

As early as 1986, Seattle had passed an aggressive panhandling law. The law was later declared unconstitutional. In any event, City Attorney Mark Sidrin was not content with its effectiveness, and therefore pushed for a suite of new laws in 1993 that outlawed everything from urinating in public to sitting on sidewalks. The new laws further gave the police the right to close to the public any alley it felt constituted a menace to public safety. Sidrin argued that such further restrictions on the behavior of homeless people (that is laws closing spaces used by the homeless to activities the homeless must do there) was necessary to assure that Seattle did not join the cities of California as "formerly great places to live." The danger was palpable, if still subtle:

Obviously the serious crimes of violence, the gangs and drug trafficking can tear a community apart, but we must not underestimate the damage that can be done by a slower, less-dramatic but nonetheless dangerous unraveling of the social order. Even for hardy urban dwellers, there comes a point where the usually tolerable "minor" misbehaviors – the graffiti, the litter and stench of urine in doorways, the public drinking, the aggressive panhandling, the lying down on the sidewalks – cumulatively become intolerable. Collectively and in the context of more serious crime, they create a psychology of fear

that can and has killed other formerly great cities because people do not want to shop, work, play or live in such an environment (Sidrin, 1993).

The logic is fascinating. It is not so much that “minor misbehaviors” are in themselves a problem. Rather, the context within which these behaviors occur (“more serious crime”) makes them a problem. The answer then seems to focus not so much on addressing the context; instead, “[t]o address the misbehavior on our streets, we need to strengthen our laws. We need to make it a crime to repeatedly drink or urinate in public, because some people ignore the current law with impunity. . . .” (Sidrin, 1993). Sidrin recognizes that “law enforcement alone is not the answer” and thus supports expanded services for the homeless. “At the same time, however, more services alone are also not the answer. Some people make bad choices” – such as the “choice” to urinate in public; to sit on sidewalks. “We also need to address those lying down day after day in front of some of our shops. This behavior threatens public safety. The elderly, infirm and vision impaired should not have to navigate around people lying prone on frequently congested sidewalks.”

There is another, perhaps more important, danger posed by those sitting and lying on streets: “many people see those sitting or lying on the sidewalk and – either because they expect to be solicited or otherwise feel apprehensive – avoid the area. This deters them from shopping at adjacent businesses, contributing to the failure of some and damaging others, costing Seattle jobs and essential tax revenue” (Sidrin, 1993). Sidrin argues in the end that homeless people in the streets and parks “threaten public safety in a less-direct but perhaps more serious way. A critical factor in maintaining safe streets is keeping them vibrant and active in order to attract people and create a sense of security and confidence.” And security is precisely the issue:

If you were to write Seattle’s story today, you might borrow Dicken’s memorable opening of “A Tale of Two Cities,” “It was the best of times, it was the worst of times.” From Fortune Magazine’s No. 1 place to do business to the capital of “grunge,” from high-tech productivity perched on the Pacific Rim to espresso barristas on the corners, it is the best of times in Seattle. We’re even a good place to be sleepless.

Especially if you are homeless. Under Sidrin’s proposals, exceptions to the “no sitting” provisions would be made for “people using sidewalks for medical emergencies, rallies, parades, waiting for buses or sitting at cafes or espresso carts” (*Seattle Times* Aug. 28, 1993). The target of these laws is obvious. And their effect was both predictable – when enforcement was emphasized downtown, many homeless people moved to out-lying business districts, prompting numerous complaints from merchants in those areas – and important to understand. To the degree that laws can annihilate spaces for the homeless, they can annihilate the homeless themselves. When such anti-homeless laws cover all public space, then presumably the homeless will simply vanish.

### *The annihilation of people by law*

Arguing from first principles in a brilliant essay, Waldron shows that the condition of being homeless in capitalist societies is most simply the condition of having no place to call one’s own. “One way of describing the plight of a homeless individual might

be to say that there is no place governed by a private property rule where he is allowed to be" (Waldron, 1991:299). Homeless people can only be on private property – in someone's house, in a restaurant bathroom – by the express permission of the owner of that property. While that is also true for the rest of us, the rest of us nonetheless have at least one place in which we are (largely) sovereign. We do not need to ask permission to use the toilet or shower or to sleep in a bed. Conversely, the only place homeless people may have even the possibility of sovereignty in their own actions is on common or public property. As Waldron explains, in a "libertarian paradise" where *all* property is privately held, a homeless person simply could not *be*. "Our society saves the homeless from this catastrophe only by virtue of the fact that some of its territory is held as collective property and made available for common use. The homeless are allowed to *be* – provided they are on the streets, in the parks, or under bridges" (Waldron, 1991:300).

Yet as city after city passes laws specifically outlawing common behaviors (urinating, defecating, standing around, sitting, sleeping) in public property:

What is emerging – and it is not just a matter of fantasy – is a state of affairs in which a million or more citizens have no place to perform elementary human activities like urinating, washing, sleeping, cooking, eating, and standing around. Legislators voted for by people who own private places in which they can do these things are increasingly deciding to make public places available only for activities other than these primal human tasks. The streets and the subways, they say, are for commuting from home to office. They are not for sleeping; sleeping is what one does at home. The parks are for recreations like walking and informal ball-games, things for which one's own yard is a little too confined. Parks are not for cooking or urinating; again, these are things one does at home. Since the public and private are complementary, the activities performed in public are the complement of those performed in private. This complementarity works fine for those who have the benefit of both sorts of places. However, it is disastrous for those who must live their whole lives on common land. If I am right about this, it is one of the most callous and tyrannical exercises of power in modern times by a (comparatively) rich and complacent majority against a minority of their less fortunate fellow human beings (Waldron, 1991:301–2).

In other words, we are creating a world in which a whole class of people simply cannot be, entirely because they have no place to be.

As troublesome as it may be to contemplate the necessity of creating "safe havens" for homeless people in the public space of cities, it is even more troublesome to contemplate a world without them. The sorts of actions we are outlawing – sitting on sidewalks, sleeping in parks, loitering on benches, asking for donations, peeing – are not themselves subject to total societal sanction. Indeed they are all actions we regularly and even necessarily engage in. What is at question is where these actions are done. For most of us, a prohibition against asking for a donation on a street is of no concern; we can sit in our studies and compose begging letters for charities. So too do rules against defecating in public seem reasonable. When one of us – the housed – find ourselves unexpectedly in the grips of diarrhea, for example, the question is only one of timing, not at all of having no place to take care of our needs. Not so for the homeless, of course: a homeless person with diarrhea is entirely at the mercy of property owners, or must find a place on public property on which to relieve him or herself.

Similarly, the pleasure (for me) of dozing in the sun on the grass of a public park is something I can, quite literally, live without, but only because I have a place where I can sleep whenever I choose. We are not speaking of murder or assault here, in which there are (near) total societal bans. Rather we are speaking, in the most fundamental sense, of geography, of a geography in which a local prohibition (against sleeping in public, say) becomes a total prohibition for some people. That is why Jeremy Waldron (1991) understands the promulgation of anti-homeless laws as fundamentally an issue of freedom: they destroy whatever freedom homeless people have, as people, not just to live under conditions at least partially of their own choosing, but to live at all. And that is why what we understand public space to be, and how we regulate it, is so essential to the kind of society we make. The annihilation of space by law is, unavoidably (if still only potentially) the annihilation of *people*.

The degree to which anti-homeless legislation diminishes the freedom or rights of homeless people is not, of course, an important concern for those who promote anti-homeless laws. Rather, they see themselves not as instigators of a pogrom, but rather as saviors: saviors of cities, saviors of all the “ordinary people” who would like to use urban spaces but simply can’t when they are choked full of homeless people lying on sidewalks, sleeping in parks and panhandling them every time they turn a corner. And theirs is not simply a good or just cause; it is a necessary one. “The conditions on our streets are increasingly intolerable and directly threaten the safety of all our citizens and the economic viability of our downtown and neighborhood districts” according to Sidrin (*Seattle Times* Oct. 1, 1993). Or as columnist Joni Balter put it “Seattle’s tough laws on panhandling, urinating and drinking in public, and sitting and lying on the sidewalk are cutting-edge stuff. Anybody who doesn’t believe in taking tough steps to make downtown more hospitable to shoppers and workers wins two free one-way tickets to Detroit or any other dead urban center of their choice” (Balter, 1994). Here is the crux of the issue. Urban decline is seen to be the result of homelessness. Detroit is “dead” because people “make bad choices” and panhandle on the streets, urinate in public, or sit on sidewalks, thereby presumably scaring off not only shoppers, workers and residents, but capital too. Seattle, though perhaps in the midst of the “best of times,” faces just this same fate if it does not crack down on homeless people and their bad behaviors. Capital will avoid the city, downtown will decline, Seattle will become a bombed out shell resembling Detroit or Newark. Hence, the homeless must be eliminated. [. . .]

The legal exclusion of homeless people from public space (or at least the legal exclusion of behaviors that make it possible for homeless people to survive) has increased in strength during the late 1980s and early 1990s, creating and reinforcing what Mike Davis (1991) has called for Los Angeles “a logic like Hell’s.” This Hellish logic is of course a response to another quite Hellish one: the logic of a globalized economy that is successful to the degree people buy into the ideology that makes their places to be little more than mere factors of production, factors played off other factors in pursuit of a continual spatial fix to ever-present crises of accumulation. It is a response, then, that seeks to re-regulate the spaces of cities so as to eliminate people quite literally made redundant by the capital the cities are now so desperate to attract.

It might seem absurd to argue that the proliferation of anti-homeless legislation is part of continual experimentation in devising a new “mode of regulation” for the realities of post-fordist accumulation. After all, the disorder of urban streets seems to

bespeak precisely the inability to regulate the contemporary political economy. But as Lipietz (1986:19) argues, a “regime of accumulation” materializes in “the form of norms, habits, laws, regulating networks, and so on that ensure the unity of the process, i.e. the appropriate consistency of individual behaviours with the schema of reproduction;” and as Harvey (1989:122) further comments, such talk of regulation “focuses our attention on the complex interrelations, habits, political practices, and cultural forms that allow a highly dynamic, and consequently unstable, capitalist system to acquire a sufficient semblance of order to function coherently at least for a certain period of time.” Hence cities are grappling with two, perhaps contradictory, processes. On the one hand they must seek to attract capital seemingly unfettered by the sorts of locational determinants important during the era when fordism was under construction. That is, they must make themselves attractive to capital – large and small – that can often choose to locate there or not. On the other hand, they (together with other scales of the state) must create a set of “norms, habits, laws, regulating networks” that legitimize the new rules of capital accumulation, rules in which not only is location up for grabs, but so too do companies seek returns of greater relative surplus value by laying off tens of thousands of workers in a single shot, outsourcing much labor, resorting to temporary labor supply firms, and so forth.

These processes are continually negotiated within the urban landscape itself. Within capitalist systems, the built environment acts as a sink for investments at times of over accumulation in the “primary” circuit of capital, the productive system. This statement, however, should not be read to imply either that the landscapes thus produced are somehow “useless” to capital or that local elites, growth coalitions, or a more nebulous “local culture” has no direct influence on the form and location of such investment. Rather, investment in the built environment is cyclical, and occurs within an already developed built environment. “At any one moment the built environment appears a palimpsest of landscapes fashioned according to the dictates of different modes of production at different stages of their historical development” (Harvey, 1982:233). The key point, however, is that under capitalism, this built environment must “assume a commodity form” (Harvey, 1982:233). That is, while the use values incorporated in any landscape may (for different parts of the population) remain quite important, the determining factor of a landscape’s usefulness is its exchange value. Buildings, blocks, neighborhoods, districts can all be subject, as market conditions change, as capital continues its search for a “spatial fix,” as other areas become more attractive for development, to rapid devaluation. Quoting Marx, Harvey (1982:237) argues that “[c]apital in general is ‘indifferent to every specific form of use value’ and seeks to ‘adopt or shed any of them as equivalent incarnations.’” People feel this in their bones; they understand the incredibly unstable, tenuous nature of investment fixed in immovable buildings, roads, parks, stores and factories. If, therefore, the built environment appears as “the domination of past ‘dead’ labour (embodied capital) over living labour in the work process” (Harvey, 1982:237), then the goal of those whose investments are securely tied to the dead is to assure that the landscape always remains a living memory, a memory that still living capital finds attractive and worth keeping alive itself. Investments – dead labor – must therefore be protected at all costs. If a built environment possesses use value to homeless people (for sleeping, for bathing, for panhandling), but that use threatens what exchange value may still exist, or may be created, then these use values must be shed. The goal for cities in the 1990s has been

to experiment with new modes of regulation over the bodies and actions of the homeless in the rather desperate hope that this will maintain or enhance the exchangeability of the urban landscape in a global economy of largely equivalent places. The annihilation of space by law, therefore, is actually an attempt to prevent those very spaces from being “creatively destroyed” by the continual and ever-revolutionary circuits of capital.

Hence, what cities are attempting is not a tried and true set of regulatory practices, but a set of experiments designed to negotiate the insecure spaces of accumulation and legitimation at the end of the twentieth century. The goal is to create, through a series of laws and ideological constructions (concerning, for example, who the homeless “really” are), a legitimate stay against the insecurity of flexible capital accumulation. That is, through these laws and other means, cities seek to use a seemingly stable, ordered urban landscape as a positive inducement to continued investment and to maintain the viability of current investment in core areas (by showing merchants, for example, that they are doing something to keep shoppers coming downtown). In this sense, anti-homeless legislation is reactionary in the most basic sense. As a reaction to the changed conditions of capital accumulation, conditions themselves that actively (if not exclusively) produce homelessness, such legislation seeks to bolster the built environment against the ever-possible specter of decline and obsolescence. It actually does not matter that much if this is how capital “really” works; it is enough that those in positions of power believe that this is how capital works. As Seattle City Attorney Mark Sidrin told the city council, the purpose of stringent controls on the behavior of homeless people is designed “to preserve the economic viability of Seattle’s commercial districts” (*Seattle Times* Aug. 3, 1993); or as he wrote more colorfully in an op-ed piece, “we Seattleites have this anxiety, this nagging suspicion that despite the mountains and the Sound and smugness about all our advantages, maybe, just maybe we are pretty much like those other big American cities, ‘back East’ as we used to say when I was a kid and before California joined the list of ‘formerly great places to live’” (Sidrin, 1993). The purpose, then, is certainly not to gain hold of the conditions that produce so much anxiety, but rather to condition people to it, to show its inevitability, and thereby, if not to positively benefit from it, then at least not to lose either. Regulation is designed not to regulate the economy, but to regulate those who are the victims of it. [. . .]

Regulating the homeless takes on a certain urgency. “Refusing” to conform to the dictates of new urban realities, homeless people daily remind us of the vagaries of the contemporary political economy. By lying in our way on the sidewalks, they require us to confront the possibility that what the collapse of time and space so celebrated in laudatory accounts of the new economy leaves in its wake is certainly not a collapse of material space: the spaces of the city still exist in all their complexity. Kirsch’s (1995:529) question is worth asking again: “What happens to space *after* its collapse?” Seemingly, it gets filled by homeless people. For law-makers the immediate thing that happens after the collapse of space is that control over space within cities is seemingly lost; the long-term solution is thus to re-regulate those spaces, annihilate the homeless, and allow the city to once again become a place of order, pleasure, consumption and accumulation. The implications of such policies – such means of regulation – seem clear enough for homeless people. As Waldron (1991:324) so clearly shows, “what

we are dealing with here is not just ‘the problem of homelessness,’ but a million or more *persons* whose activity and dignity and freedom are at stake.” But so too are we creating, through these laws and the discourses that surround them, a public sphere for all of us that is just as brutal as the economy with which it articulates.

### **Citizenship in the Spaces of the City: A Brutal Public Sphere**

Now one question we face as a society – a broad question of justice and social policy – is whether we are willing to tolerate an economic system in which large numbers of people are homeless. Since the answer is evidently, “Yes,” the question that remains is whether we are willing to allow those who are in this predicament to act as free agents, looking after their own needs, in public places – the only space available to them. It is a deeply frightening fact about the modern United States that those who *have* homes and jobs are willing to answer “Yes” to the first question and “No” to the second (Waldron, 1991:304).

The importance of anti-homeless laws to the freedom of homeless people seems clear – and important enough. But beyond that, these laws also have the effect of helping to create and reproduce a brutal public sphere in which not only is it excusable to destroy the lives of homeless people, but also in which there seems scant possibility for a political discourse concerning the nature of the types of cities we want to build. That is, these laws reflect a changing conception of citizenship which, contrary to the hard won inclusions in the public sphere that marked the civil rights, women’s and other movements in past decades, now seeks to re-establish exclusionary citizenship as just and good.

Craig Calhoun (1992:40) has argued that the most valuable aspect of Habermas’ *The Structural Transformation of the Public Sphere* (1989) is that it shows “how a determinate set of sociohistorical conditions gave rise to ideals they could not fulfil” and how this space between ideal and reality might hopefully “provide motivation for the progressive transformation of those conditions.” In later work, Habermas turned away from such historically specific critique to focus on “universal characteristics of communication” (Calhoun, 1992:40). Others, however, have retained the ideal of a critical public sphere in which continual struggle seeks to force the material conditions of public life ever closer to the normative ideal of inclusiveness. Calhoun (1992:37) suggests that social movements, not just dispassionate individuals, have been central in “reorienting the agenda of public discourse, bringing new issues to the fore”. As Calhoun (1992:37) notes, “The routine rational-critical discourse of the public sphere cannot be about everything all at once. Some structuring of attention, imposed by dominant ideology, hegemonic powers, or social movements, must always exist.” Theories of the public sphere – and practices within it – therefore, must necessarily be linked to theories of public space. Social movements necessarily require a “space *for* representation” (Mitchell, 1995:124). The regulation of public space thus necessarily regulates the nature of public debate: the sorts of actions and practices that can be considered legitimate, the role of various groups as members of a legitimate public, etc. Regulating public space (and the people who live in it) “structures attention” toward some issues and away from others.

Similarly, the perhaps inchoate interventions into public debate made by homeless people through their mere presence in public forces attention on the nature of homelessness as a public problem and not just one residing in the private bodies and lives of homeless people themselves. This is the “crucial *where*” question to which Cresswell (1996) has recently drawn our attention. Cresswell argues that regulating people is often a project of regulating the purity of space, of creating for any space a set of determinant meanings as to what is proper. Yet these proprietary places are continually transgressed; and these transgressions are just as continually redressed through dominant discourses which seek to reinforce the “network or web of meanings” of place such that the pure and proper is shored up against transgression. The object of such discourse, Cresswell (1996:59) writes, “is an alleged transgression, an activity that is deemed ‘out of place’” – for example, just those sorts of “private” activities in which the homeless engage in public space, and which are now the subject of such intense legal regulation. By being out of place, homeless people threaten the “proper” meaning of place.

But there is more to it than that. By being out of place, by doing private things in public space, homeless people threaten not just the space itself, but also the very ideals upon which we have constructed our rather fragile notions of legitimate citizenship. Homeless people scare us: they threaten the ideological construction which declares that publicity – and action in public space – must be voluntary. Citizenship is based on notions of volunteerism in contemporary democracies. Private citizens meet (if only ideally) in public to form a (or the) public. But they always have the option of retreating back into private, into their homes, into those places over which they presumably have sovereign control. The public sphere is thus a voluntary one, and the involuntary publicity of the homeless is thus profoundly unsettling. Efforts like Heather MacDonald’s (1995) to show the voluntary nature of homelessness are therefore crucial for another reason than that outlined above. Such efforts provide an ideological grounding for reasserting the privileges of citizenship, for reassuring ourselves that our democracy still works, despite the unsettling shifting of scales associated with the annihilating economy. As homelessness grows concomitantly with the globalization of the economy (eroding boundaries, unsettling place, throwing into disarray settled notions about home, community, nation and citizenship), homeless people marooned in public frighten us even more. Not there but for the grace of God, but rather there but for the grace of downsizing, out-sourcing corporations, go I. So it becomes vital that we re-order our cities such that homelessness is “neutralized” and the legitimacy of the state, and indeed our own sense of agency, is maintained. The rights of homeless people do not matter (when in competition with “our” rights to order, comfort, places for relaxation, recreation and unfettered shopping) simply because we work hard to convince ourselves that homeless people are not really citizens in the sense of free agents with sovereignty over their own actions. Anti-homeless legislation helps institutionalize this conviction by assuring the homeless in public no place to be sovereign.

Anti-homeless legislation, by seeking to annihilate the spaces in which homeless people must live – by seeking, that is, to so regulate the public space of the city such that there literally is no room for homeless people, recreates the public sphere as intentionally exclusive, as a sphere in which the legitimate public only includes those who (as Waldron would put it) have a place governed by private property rules to call their own. Landed property thus again becomes a prerequisite of effective citizenship.



Denied sovereignty, homeless people are reduced to the status of children: “the homeless person is utterly and at all times at the mercy of others” (Waldron, 1991:299). Reasserting the child-like nature of some members of society so as to render them impotent is, of course, an old move, practiced against women, African Americans, Asian and some European immigrants, and unpropertied, radical workers throughout the course of American history.

But such moves are not just damaging to their subjects. Rather, they directly affect the rest of us too. “[I]f we value autonomy,” Waldron (1991:320) argues,

we should regard the satisfaction of its preconditions as a matter of importance; otherwise, our values simply ring hollow so far as real people are concerned. . . . [T]hough we say there is nothing dignified about sleeping or urinating, there is certainly something inherently *undignified* about being prevented from doing so. Every torturer knows this: to break the human spirit, focus the mind of the victim through petty restrictions pitilessly imposed on the banal necessities of life. We should be ashamed that we have allowed our laws of public and private property to reduce a million or more citizens to something like this level of degradation.

We are recreating society – and public life – on the model of the torturer, swerving wildly between paternalistic interest in the lives of our subjects and their structured degradation. In essence we are recreating a public sphere that consists in unfreedom and torture. Or as Mike Davis (1990:234) puts it in a chillingly accurate metaphor: “The cold war on the streets of Downtown is ever escalating.” To the degree we can convince ourselves that the homeless are the Communists of our age, we are calling this public sphere just. And that has the effect of legitimizing not only our own restrictions on the autonomy of others, but also the iniquitous political economy that creates the conditions within which we take such decisions. [. . .]

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OP-ED CONTRIBUTOR

**Is It Now a Crime to Be Poor?**

By BARBARA EHRENREICH

IT'S too bad so many people are falling into poverty at a time when it's almost illegal to be poor. You won't be arrested for shopping in a Dollar Store, but if you are truly, deeply, in-the-streets poor, you're well advised not to engage in any of the biological necessities of life — like sitting, sleeping, lying down or loitering. City officials boast that there is nothing discriminatory about the ordinances that afflict the destitute, most of which go back to the dawn of gentrification in the '80s and '90s. "If you're lying on a sidewalk, whether you're homeless or a millionaire, you're in violation of the ordinance," a city attorney in St. Petersburg, Fla., said in June, echoing Anatole France's immortal observation that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges."

In defiance of all reason and compassion, the criminalization of poverty has actually been intensifying as the recession generates ever more poverty. So concludes a new study from the National Law Center on Homelessness and Poverty, which found that the number of ordinances against the publicly poor has been rising since 2006, along with ticketing and arrests for more "neutral" infractions like jaywalking, littering or carrying an open container of alcohol.

The report lists America's 10 "meanest" cities — the largest of which are Honolulu, Los Angeles and San Francisco — but new contestants are springing up every day. The City Council in Grand Junction, Colo., has been considering a ban on begging, and at the end of June, Tempe, Ariz., carried out a four-day crackdown on the indigent. How do you know when someone is indigent? As a Las Vegas statute puts it, "An indigent person is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive" public assistance.

That could be me before the blow-drying and eyeliner, and it's definitely Al Szekely at any time of day. A grizzled 62-year-old, he inhabits a wheelchair and is often found on G Street in Washington — the city that is ultimately responsible for the bullet he took in the spine in Fu Bai, Vietnam, in 1972. He had been enjoying the luxury of an indoor bed until last December, when the police swept through the shelter in the middle of the night looking for men with outstanding warrants.

It turned out that Mr. Szekely, who is an ordained minister and does not drink, do drugs or curse in front of ladies, did indeed have a warrant — for not appearing in court to face a charge of "criminal trespassing" (for sleeping on a sidewalk in a Washington suburb). So he was dragged out of the shelter and put in jail. "Can you imagine?" asked Eric Sheptock, the homeless advocate (himself a shelter resident) who introduced me to Mr. Szekely. "They arrested a homeless man in a shelter for being homeless."

The viciousness of the official animus toward the indigent can be breathtaking. A few years ago, a group called Food Not Bombs started handing out free vegan food to hungry people in public parks around the nation. A number of cities, led by Las Vegas, passed ordinances forbidding the sharing of food with the indigent in public places, and several members of the group were arrested. A federal judge just overturned the anti-sharing law in Orlando, Fla., but the city is appealing. And now Middletown, Conn., is cracking down on food sharing.

If poverty tends to criminalize people, it is also true that criminalization inexorably impoverishes them. Scott Lovell, another homeless man I interviewed in Washington, earned his record by committing a significant crime — by participating in the armed robbery of a steakhouse when he was 15. Although Mr. Lovell dresses and speaks more like a summer tourist from Ohio than a felon, his criminal record has made it extremely difficult for him to find a job.

For Al Szekely, the arrest for trespassing meant a further descent down the circles of hell. While in jail, he lost his slot in the shelter and now sleeps outside the Verizon Center sports arena, where the big problem, in addition to the security guards, is mosquitoes. His stick-thin arms are covered with pink crusty sores, which he treats with a regimen of frantic scratching.

For the not-yet-homeless, there are two main paths to criminalization — one involving debt, and the other skin color. Anyone of any color or pre-recession financial status can fall into debt, and although we pride ourselves on the abolition of debtors' prison, in at least one state, Texas, people who can't afford to pay their traffic fines may be made to "sit out their tickets" in jail.

Often the path to legal trouble begins when one of your creditors has a court issue a summons for you, which you fail to honor for one reason or another. (Maybe your address has changed or you never received it.) Now you're in contempt of court. Or suppose you miss a payment and, before you realize it, your car insurance lapses; then you're stopped for something like a broken headlight. Depending on the state, you may have your car impounded or face a steep fine — again, exposing you to a possible summons. "There's just no end to it once the cycle starts," said Robert Solomon of Yale Law School. "It just keeps accelerating."

By far the most reliable way to be criminalized by poverty is to have the wrong-color skin. Indignation runs high when a celebrity professor encounters racial profiling, but for decades whole communities have been effectively "profiled" for the suspicious combination of being both dark-skinned and poor, thanks to the "broken windows" or "zero tolerance" theory of policing popularized by Rudy Giuliani, when he was mayor of New York City, and his police chief William Bratton.

Flick a cigarette in a heavily patrolled community of color and you're littering; wear the wrong color T-shirt and you're displaying gang allegiance. Just strolling around in a dodgy neighborhood can mark you as a potential suspect, according to "Let's Get Free: A Hip-Hop Theory of Justice," an eye-opening new book by Paul Butler, a former federal prosecutor in Washington. If you seem at all evasive, which I suppose is like looking "overly anxious" in an airport, Mr. Butler writes, the police "can force you to stop just to investigate why you don't want to talk to them." And don't get grumpy about it or you could be "resisting arrest."

There's no minimum age for being sucked into what the Children's Defense Fund calls "the cradle-to-prison pipeline." In New York City, a teenager caught in public housing without an ID — say, while visiting a friend or relative — can be charged with criminal trespassing and wind up in juvenile detention, Mishi Faruquee, the director of youth justice programs for the Children's Defense Fund of New York, told me. In just the past few months, a growing number of cities have taken to ticketing and sometimes handcuffing teenagers found on the streets during school hours.

In Los Angeles, the fine for truancy is \$250; in Dallas, it can be as much as \$500 — crushing amounts for people living near the poverty level. According to the Los Angeles Bus Riders Union, an advocacy group, 12,000 students were ticketed for truancy in 2008.

Why does the Bus Riders Union care? Because it estimates that 80 percent of the "truants," especially those who are black or Latino, are merely late for school, thanks to the way that over-filled buses whiz by them without stopping. I met people in Los Angeles who told me they keep their children home if there's the slightest chance of their being late. It's an ingenious anti-truancy policy that discourages parents from sending their youngsters to school.

The pattern is to curtail financing for services that might help the poor while ramping up law enforcement: starve school and public transportation budgets, then make truancy illegal. Shut down public housing, then make it a crime to be homeless. Be sure to harass street vendors when there are few other opportunities for employment. The experience of the poor, and especially poor minorities, comes to resemble that of a rat in a cage scrambling to avoid erratically administered electric shocks.

And if you should make the mistake of trying to escape via a brief marijuana-induced high, it's "gotcha" all over again, because that of course is illegal too. One result is our staggering level of incarceration, the highest in the world. Today the same number of Americans — 2.3 million — reside in prison as in public housing.

Meanwhile, the public housing that remains has become ever more prisonlike, with residents subjected to drug testing and random police sweeps. The safety net, or what's left of it, has been transformed into a dragnet.

Some of the community organizers I've talked to around the country think they know why "zero tolerance" policing has

ratcheted up since the recession began. Leonardo Vilchis of the Union de Vecinos, a community organization in Los Angeles, suspects that “poor people have become a source of revenue” for recession-starved cities, and that the police can always find a violation leading to a fine. If so, this is a singularly demented fund-raising strategy. At a Congressional hearing in June, the president of the National Association of Criminal Defense Lawyers testified about the pervasive “overcriminalization of crimes that are not a risk to public safety,” like sleeping in a cardboard box or jumping turnstiles, which leads to expensively clogged courts and prisons.

A Pew Center study released in March found states spending a record \$51.7 billion on corrections, an amount that the center judged, with an excess of moderation, to be “too much.”

But will it be enough — the collision of rising prison populations that we can’t afford and the criminalization of poverty — to force us to break the mad cycle of poverty and punishment? With the number of people in poverty increasing (some estimates suggest it’s up to 45 million to 50 million, from 37 million in 2007) several states are beginning to ease up on the criminalization of poverty — for example, by sending drug offenders to treatment rather than jail, shortening probation and reducing the number of people locked up for technical violations like missed court appointments. But others are tightening the screws: not only increasing the number of “crimes” but also charging prisoners for their room and board — assuring that they’ll be released with potentially criminalizing levels of debt.

Maybe we can’t afford the measures that would begin to alleviate America’s growing poverty — affordable housing, good schools, reliable public transportation and so forth. I would argue otherwise, but for now I’d be content with a consensus that, if we can’t afford to truly help the poor, neither can we afford to go on tormenting them.

*Barbara Ehrenreich is the author, most recently, of “This Land Is Their Land: Reports From a Divided Nation.”*

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